Decision 2003-096

EUB

ENMAX Power Corporation

2004 Distribution Tariff Application
2004 Regulated Rate Tariff Application

Request for Approval to Commence Negotiated Settlement

November 25, 2003

Alberta Energy and Utilities Board

ALBERTA ENERGY AND UTILITIES BOARD
Decision 2003-096: ENMAX Power Corporation
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Application Nos. 1306819, 1306818

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

ENMAX POWER CORPORATION
2004 DISTRIBUTION TARIFF APPLICATION
2004 REGULATED RATE TARIFF APPLICATION
REQUEST FOR APPROVAL TO COMMENCE A NEGOTIATED SETTLEMENT

Decision 2003-096
Application Nos. 1306819, and 1306818
File Nos. 1210-1 & 1210-2

1 THE APPLICATION

Pursuant to its Revised Negotiated Settlement Guidelines (Revised Guidelines),[1] the Alberta Energy and Utilities Board (Board) received from ENMAX Power Corporation (EPC) a request to negotiate Application Nos. 1306819 and 1306818 dated November 12, 2003 (Request to Negotiate). Application No. 1306819 is EPC's 2004 Distribution Tariff (DT) Application. Application No. 1306818 is EPC's 2004-Regulated Rate Tariff (RRT) Application for customers in EPC's service area.[2] ENMAX Energy Corporation is the RRT Provider in EPC's service area.

As of the time of making this Decision, the Board had not received any comments from interested parties in relation to EPC's Request to Negotiate.

2 VIEWS OF EPC

In its Request to Negotiate, EPC indicated its intention to attempt to reach a comprehensive negotiated settlement of all issues arising in respect of EPC's 2004 DT and 2004 RRT. Because of the significant overlap of interested parties with respect to the DT and RRT Applications, EPC proposed to pursue a single, comprehensive negotiated settlement process in an attempt to resolve all issues in both Applications.

As required by Section 4.1 of the Revised Guidelines, EPC set out its view of the main issues to be negotiated based on Information Requests received to date by EPC and the arguments presented at the interim hearing:[3]

Distribution Tariff

- magnitude of change in 2004 rates from 2003 rate levels;
- forecast customer, load and revenue growth;
- operating and maintenance expenses;
- proposed transmission system access service deferral account;
- hearing cost reserve account;

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1 Informational Letter IL98-04 Revised, Revised Negotiated Settlement Guidelines Tolls, tariffs, and Terms and Conditions of Service (February 4, 2003)

2 City of Calgary

3 The interim hearing was conducted on October 27-30, 2003.

- appropriate amortization of 2004 DT;
- generic cost of capital;
- capital assets and investment policy;
- depreciation and amortization, including composite depreciation rates and negative salvage treatment;
- equity funding through rates;
- inter-affiliate code of conduct and related affiliate matters, including implementation date for the code of conduct;
- cost of service study, including class allocators;
- revenue to cost ratios of DT rate classes;
- treatment of D410 customers with alternate feeds;
- revised fee schedule; and
- revised Terms and Conditions.

Regulated Rate Tariff

- margin;
- allocation of margin among charges and customer classes;
- forecast customer and load attrition;
- fee revenue deferral account;
- use of initial or final settlement data settlement for the energy market charge/refund account, and rider methodology;
- amortization of 2004 RRT regulatory costs through a hearing reserve account;
- definition of "residential" and eligibility for transition rate of bulk-metered multi-residential units;
- treatment of losses and unaccounted for energy ("UFE");
- operating and maintenance expenses and Administration Charge;
- revised fees; and
- revised Terms and Conditions.

EPC indicated that, as required under Section 2.1 of the Revised Guidelines, all parties with an interest in EPC's 2004 DT Application would be given the opportunity to participate fully in the negotiated settlement process, and to have their interests properly addressed, including any DT or RRT issues in addition to those listed above. EPC proposed to have parties to the negotiated settlement process enter into an appropriate confidentially agreement, as contemplated by Section 6.2 of the Revised Guidelines. EPC intended to invite participation of Board staff in an observer capacity, as contemplated in Section of 8.1 of the Revised Guidelines.

EPC indicated that it was prepared to commit significant resources to the settlement process, as it believed that a negotiated settlement would be efficient in light of the potentially significant benefits of such a process in the consideration of EPC's Applications.

On that basis, EPC requested that the Board approve the Request to Negotiate as soon as possible.

3 VIEWS OF THE BOARD

On July 14, 2003, in anticipation of the filing of EPC's 2004 DT and 2004 RRT Applications, the Board issued a Notice setting out a schedule to consider the Applications and related applications by EPCOR Distribution Inc. and EPCOR Energy Services Inc. (EESI). The Notice indicated that parties interested in EPC's 2004 DT and RRT Applications should register by August 15, 2003 and that parties who failed to register by that date would not be updated as to any changes to the schedule for processing the Applications.

The Board notes that, on November 12, 2003, EPC circulated the Request to Negotiate to all the parties that had registered in the proceeding. On that basis, the Board considers that notice of EPC's Request to Negotiate was adequate and no further publication of notice is required.

The Board notes that none of the registered parties in the DT and RRT proceeding have expressed a view on EPC's Request to Negotiate either in favor or in objection.

The Board also notes that the DT and RRT Applications are inter-related in terms of cost allocations and other matters, which tend to favour dealing with the disposition of the two Applications according to the same process.

Negotiated settlements provide an alternative or complementary process to the traditional hearing process in dealing with utility-related issues such as tolls, tariffs, and terms and conditions of service. In the past, the Board has expressed its commitment to the negotiated settlement process as part of its objective of achieving greater regulatory efficiency and effectiveness in the absence of unique circumstances.

However, in a number of Decisions, the Board has also expressed its view that it is appropriate for the Board, in carrying out its public interest mandate, to fully examine the operations of a utility from time to time by conducting a full general tariff application (GTA) to ensure that rates, charges and terms and conditions of service are just and reasonable.

For example, in Decision 2001-14,[4] the Board noted its concerns with the length of time (approximately seven years) that had elapsed since the last litigated GTA of ATCO Electric Ltd. (AE), and provided notice to parties that the issue of the appropriate length of negotiated settlements would be reviewed by the Board in the future. The Board noted that, over time, it is reasonable to expect significant changes in the operations and financing of a utility. The Board also noted that a litigated proceeding has the advantage of calibrating the

[4] Decision 2001-14, *ATCO Electric Ltd., 2001-2002 Distribution Tariff Application, Part B: Phase I Distribution Tariff Revenue Requirement* (February 27, 2001)

revenue requirement in an open, public process, thereby providing for all parties to fully understand the matters at hand.

Similarly, in Decision 2003-060[5], while the Board approved AltaGas's Request to Negotiate, the Board indicated that it expected AltaGas to file a full GTA to be examined at a Board hearing for its next test years, since AltaGas had not been subject to a full GTA with extensive examination since 1996.[6]

The Board also notes that both AE and AltaGas had extensive histories of regulation under the Board. In contrast, the Alberta Government has only this year enacted the legislation that brings EPC under the Board's jurisdiction commencing January 1, 2004, from its former regulation by Calgary City Council.[7] From this change of regulatory authority, the Board considers the Government's intent to be clear that the Board ought to fully examine EPC's DT and RRT Applications for 2004.

As a general principle, the Board considers it important, in the first year that a utility comes under the Board's jurisdiction, for the Board to conduct a thorough examination of that utility's finances and operations. This examination allows the Board to establish, among other things, a just and reasonable rate base, return on that rate base, and revenue requirement. Without any prior history of rate regulation by the Board, the Board does not consider that negotiation of EPC's 2004 DT and RRT Applications would afford parties or the Board an adequate opportunity to assess the reasonableness of EPC's first Board-regulated tariffs.

EPC's counsel indicated at the interim hearing that:

> ENMAX has been regulated by a different regulator under a different regulatory process and a different regulatory regime, there are bound to be things that ENMAX does differently and, indeed, has done differently in the past when compared to utilities that the Board has traditionally regulated.
>
> In preparing its applications, Mr. Chairman, ENMAX has endeavoured to structure its application in a manner that is consistent with the Board's expectations. However, ENMAX is not an investor-owned utility; it is a municipally owned utility, and there are aspects of ENMAX's applications and its operations that are different and may need to be approached differently if ENMAX is to be fairly and appropriately regulated.
>
> In this respect, ENMAX believes that if the Board contemplates a significant change to the manner in which ENMAX has historically operated, it would be appropriate to provide ENMAX with sufficient time to implement those changes.
>
> For example, with respect to significant changes ENMAX suggests that it may be appropriate for the Board to set out the change in its decision but as an option to delay implementation until the next test period.[8]

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5 Decision 2003-060, *AltaGas Utilities, Approval to Commence Negotiated Settlement Process for 2003/2004 GTA*

6 Decision U96116, dated December 16, 1996, approved rates, tolls and charges effective for all consumption on and after January 1, 1997.

7 EPC becomes subject to the Board's jurisdiction by virtue of section 102 of the *Electric Utilities Act*, SA 2003, c. E-5.1.

8 Transcript pages 782-784.

EPC's 2004 DT and RRT Applications provide the first opportunity for the Board to exercise its public interest mandate to fully examine EPC's finances and operations and to determine what changes in approach (if any) from that of its former regulator may be required. The Board is not comfortable leaving such important, precedent setting regulatory decisions to the "gives" and "takes" of a negotiated settlement in the circumstances, particularly given the limitations placed on the Board's ability to examine a settlement under the Revised Guidelines.

For the foregoing reasons, the Board denies EPC's Request to Negotiate its 2004 DT and RRT.

Dated in Calgary, Alberta on November 25, 2003.

ALBERTA ENERGY AND UTILITIES BOARD

N. W. MacDonald, P.Eng.
Presiding Member

R. G. Lock, P.Eng.
Member

J. I. Douglas, FCA
Member